HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 11 of 2007.
Reserved on: 27.12.2007.
Decided on: 31.12.2007.

Daler Singh ..... Petitioner.

Versus

State of Himachal Pradesh and another .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the petitioner:	In person.
For respondent No.1:	Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.
For respondent No.2:	Mr.Surender Sharma, Advocate.

Per V.K. Ahuja, J:

This writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India for quashing the notification issued by respondent No.1, vide which respondent No.2 has been appointed as Government Analyst without following the statutory provisions of Drugs and Cosmetics Act, 1940.

Briefly stated the facts of the case are that the petitioner is a citizen of India and had served as Drug Controller of H.P. He filed the present writ petition as a Public Interest Litigation. He alleged that respondent No.1 appointed respondent No.2 as Government Analyst at CTL, Kandaghat in respect of

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Whether reporters of local newspapers may be allowed to see the judgment? Yes.

biological and non-biological drugs and cosmetics for whole of the State of H.P., vide notification, dated 18.8.2006. The petitioner is aggrieved by the said notification issued by respondent No.1 since respondent No.2 was not a qualified person to be appointed as Government Analyst as per the provisions laid down under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder. The petitioner filed an application before respondent No.1 under Right to Information Act to supply the copies of qualifications of respondent No.2 and after obtaining the same and observing that respondent No.2 was not eligible to be appointed as Government Analyst under the provisions of Drugs and Cosmetics Act, 1940, he filed the present writ petition for quashing of the said order.

A notice of the petition was issued to the respondents who filed replies. We have heard the learned counsel for the parties and have gone through the record of the case.

The submissions made by the petitioner in person were that the qualifications have been provided for a Drug Inspector under Section 20 of the Act and Rule 44 of Drugs and Cosmetics Rules, 1945 framed under the provisions of the Act. It was submitted that since respondent No.2 does not fulfill the requisite qualifications and does not have the necessary experience, he was not entitled to be appointed as Drug Inspector.

Section 20 of Drugs and Cosmetics Act, 1940 reads as under:

> *"**20. Government Analysts. –** (1) The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Government Analysts for such areas in the State and in respect of such drugs or classes of drugs or such cosmetics or classes of cosmetics as may be specified in the notifications.*

(2) The Central Government may also, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Government Analysts in respect of such drugs or classes of drugs or such cosmetics or classes of cosmetics as may be specified in the notification.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), neither the Central Government nor a State Government shall appoint as a Government Analyst any official not serving under it without the previous consent of the Government under which he is serving.

(4) No person who has any financial interest in the import, manufacture or sale of drugs or cosmetics shall be appointed to be a Government Analyst under sub-section (1) or sub-section (2) of this section."

Rule 44 of Drugs and Cosmetics Rules, 1945 provides the qualifications of a Government Analyst, which reads as under:

*"**44. Qualifications of Government Analyst. –** A person appointed as a Government Analyst under the Act shall be a person who –*

(a) is a graduate in Medicine or Science or Pharmacy or Pharmaceutical Chemistry of a University established in India by the law or has an equivalent qualification recognized and notified by the Central Government for such purpose and has had not less than five years' post-graduate experience in the testing of drugs in a laboratory under the control of (i) a Government Analyst appointed under the Act, or (ii) the head of an Institution or testing laboratory approved for the purpose by the appointing authority or has completed two years' training on testing of drugs, including items stated in Schedule C, in Central Drugs Laboratory, or

(b) possesses a post-graduate degree in Medicine or Science or Pharmacy or Pharmaceutical Chemistry of a University established in India by the law or has an equivalent qualification recognized and notified by the Central Government for such purpose or possesses the Associateship Diploma of the Institution of Chemists (India) obtained by passing the said examination with 'Analysis of Drugs and Pharmaceuticals' as one of the subjects and has had after obtaining the said post-graduate degree or diploma not less than three Years' experience in the testing of drugs in a laboratory under the control of (i) a Government Analyst appointed under the Act, or (ii) the head of an institution or testing laboratory approved for the purpose by the appointing authority or has completed two years' training on testing of drugs

including items stated in Schedule C, in Central Drugs Laboratory:

Provided that –

(i) for the purpose of examination of items in Schedule C,-

(ia) the persons appointed under clause (a) or (b) and having degree in Medicine, Physiology, Pharmacology, Microbiology, Pharmacy should have experience or training in testing of said items in an institution or laboratory approved by the appointing authority for a period of not less than six months;

(ib) the person appointed under clause (a) or (b) but not having degree in the above subject should have experience or training in testing of the said Schedule C drugs for a period of not less than three years in an institution or laboratory approved by the appointing authority or have completed two years training on testing of drugs including item stated in Schedule C in Central Drugs Laboratory;

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According to Rule 44, a person to be appointed as Government Analyst must be a graduate in Medicine or Science or Pharmacy or Pharmaceutical Chemistry of a university established in India by law and has an equivalent qualification recognized and notified by the Central Government for such purpose. There were no specific allegations made in the petition that respondent No.2 was not a graduate as provided in Rule 44. According to the copy of the letter written by respondent No.1 to the petitioner in reply to his letter for supply of copy of qualifications of respondent No.2, respondent No.1 had clearly mentioned the academic qualifications and professional qualifications of respondent No.2 as under:

*"**Academic Qualification:-** M.Sc., M.Phill(Physics), A.I.C. (Analytical Chemistry) recognized by the union Govt. as equivalent to M.Sc. degree in Chemistry.*

***Professional Qualification:-** Qualified Public Analyst by the duly constituted Board in accordance with the sub-rule(b) of rule 6 of PFA Rules,*

1995 by Govt. of India, Ministry of Health & Family Welfare, Directorate General of Health Services in Jan.1994."

Thus, in so far as first requirement is concerned, respondent No.2 fulfills the academic qualifications, as required for appointment as Government Analyst. However, according to Rule 44(a), such a Government Analyst was also required to have five years post graduate experience in the testing of drugs in laboratory under the control of a Government Analyst and there is nothing in the professional qualifications of respondent No.2 that he possesses five years post graduate course in the testing of drugs in a laboratory. Under Clause (b) of Rule 44, a person possessing a post graduate degree in Medicine or Science can also be appointed as Government Analyst under the provisions of the Act in case, after obtaining the said post graduate degree or diploma, he has got not less than three years experience in the testing of drugs in a laboratory under the control of a Government Analyst appointed under the Act or the Head of an Institution or testing laboratory approved for the purpose by the appointing authority or he has completed two years training on testing of drugs including items stated in Schedule C, in Central Drugs Laboratory.

Coming to the experience of three years, there is nothing in the letter referred to above written by respondent No.1 that respondent No.2 possesses three years experience, as required under this provision.

In reply filed by respondent No.2, he submitted that he has experience while working in different capacities in Composite Testing Laboratory, Kandaghat. However, in the reply filed by him, he did not plead that he possesses the necessary three years experience in the testing of drugs in a

laboratory under the control of a Government Analyst, as required under Rule 44(b).

In the reply, respondent No.1 pleaded about the qualifications of respondent No.2 and that he has more than five years experience as he is the Senior Analyst working with the Department. More so, respondent No.2 has been assigned additional charge of Government Analyst till further orders. Respondent No.1 also did not plead that he had the necessary experience under the provisions of Rule 44(b), as required. Respondent No.2 had attached his various certificates of experience while working in Composite Testing Laboratory, Kandaghat and his experience as Assistant Chemical Examiner since 7.11.1989. He also attached a certificate that he had been discharging the duties of Public Analyst since 28.2.1995 and 20.11.1995 and has been assisting in similar analysis in Liquor and NDPS cases.

We are not concerned with his experience in other fields but the question for consideration as is to his experience in analysis of drugs. According to the affidavit filed by Under Secretary (Health), to the Government of Himachal Pradesh, respondent No.2 has experience of testing drugs mentioned in Schedule C of the Drugs and Cosmetics Act, 1940 since his appointment as Deputy Government Analyst i.e. August 2006. It was also pleaded that prior to this period, respondent No.2 has assisted the technicians in testing the drugs in the said Laboratory.

From above discussion, it is clear that there is nothing on record to show that respondent No.2 possesses necessary three years experience in the testing of drugs in a laboratory under the control of a Government Analyst as required under Rule 44(b). Therefore, respondent No.2 was not competent to be appointed as a Government Analyst under the provisions of Drugs and Cosmetics

Act, 1940, though he may be competent to perform his duties as Government Analyst under the provisions of other Acts.

We accordingly quash the appointment of respondent No.2 as Government Analyst (for testing of drugs) though he shall continue to perform his duties under the provisions of the other Acts as Government Analyst/Assistant Chemical Examiner. Respondent No.1 shall take steps within two weeks from today for notifying any other Laboratory in any other place in India which can be declared as the Laboratory for testing of drugs under the provisions of Drugs and Cosmetics Act, 1940, so that the samples of drugs for analysis are sent to such a notified laboratory under the provisions of the Act. Until and unless the said Laboratory is notified, samples shall not be sent to the Laboratory of the State until and unless a duly qualified person is appointed. The writ petition is allowed accordingly. There is no order as to costs.

In view of the final disposal of the main petition, all the pending applications shall also stand disposed of.

(Deepak Gupta),
Judge.

(V.K. Ahuja),
Judge.

December 31, 2007. (TILAK)